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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,343	03/15/2004	Michael Bianco	12715/3	2089
26646	7590	12/13/2006	EXAMINER	
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			DUONG, THO V	
			ART UNIT	PAPER NUMBER
			3744	

DATE MAILED: 12/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/801,343	BIANCO, MICHAEL	
	Examiner	Art Unit	
	Tho v. Duong	3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-36, 38, 39 and 48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-36, 38, 39 and 48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of applicant's amendment filed 9/29/06 is acknowledged. Claims 27-36, 38-39 and 48 are pending.

Response to Arguments

Applicant's arguments with respect to claims 27,29-36 and 38-39 over the rejection of Viegas have been considered but are moot in view of the new ground(s) of rejection. Applicant's arguments over Marciniak filed 9/29/06 have been fully considered but they are not persuasive. Applicant's argument that Marciniak fails to disclose the limitation that the air mover configured to draw airflow through the second airflow plenum in a first generally horizontal direction because Marciniak discloses air enters the apparatus at air intake 34, travels in a vertical direction across indoor coil 42. This argument has been very carefully considered but is not deemed to be persuasive because the inlet (34) is located on a side of the plenum. It is inherent that the air must firstly be drawn horizontally throughout the plenum before it can be drawn vertically.

Since applicant has not filed a terminal disclaimer, the double patent rejection in previous Office Action is hereby repeated.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 27, 29-36 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Marciniak (US 4,544,023). Marchiniak discloses (figures 1-4) a cooling system comprising a container (13) which is adapted to hold a produce; a heat exchanger associated with the container, the heat exchanger comprising a housing adapted to enclose a coil assembly (42), wherein the housing includes a top (26), a bottom (28), two sides (22,24) and two ends (vertical ends), one of the end defining an inlet (34) and the other end partially defining an outlet (36); the coil assembly (42) tilted in an interior of the housing; the coil assembly partially defining in the housing on opposite side of the coil assembly a first airflow plenum and a second airflow plenum; at least one air mover (80) situated adjacent to the housing; the air mover (80) configured to draw airflow through the second airflow plenum in a first general horizontal direction since the inlet (34) is located on aside of the plenum, air must be firstly drawn horizontally into the plenum; the air mover (80) directing the airflow from the second airflow plenum in a second generally vertical direction substantially perpendicular to the first direction; a further heat exchanger (40) associated with the container; the heat exchanger (42) is situated in an interior of the container (13) on a top half of the container. Regarding claims 27 and 31-34, It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138. Regarding claims 27 and 31-34, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employ does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitation. Ex parte Masham, 2 USPQ2d 1647 (1987). In this instant case, the container is intended to transport a fresh produce, a marine produce or to control ripening of

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fresh produce, does not differentiate the claimed container from the container Marciniak since the container (13) and the heat exchanger system has an ability to contain fresh produce, to control ripening of fresh produce or to contain marine product or be a transit place to transport the produce from one place to another place.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27,29-36 and 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grupa (US 4,622,831) in view of Mattioli (US 3,849,854) or W. e. Lin (US 3,315,488). Grupa discloses (figure 2) a cooling system comprising a container (vehicle) which is adapted to hold a produce; a heat exchanger associated with the container, the heat exchanger comprising a housing adapted to enclose a heat exchanger assembly (4), wherein the housing includes a top, a bottom, two sides and two ends, one of the end defining an inlet (15) and the other end partially defining an outlet (16); the heat exchanger assembly (4) tilted in an interior of the housing; the coil assembly partially defining in the housing on opposite side of the coil assembly a first airflow plenum (9) and a second airflow plenum (10), wherein a cross-sectional area of the first airflow plenum diminishes as the air flow is distributed from the inlet and the cross-section area of the second airflow plenum increases as the airflow is distributed over the heat exchanger assembly toward the outlet; at least one air mover (11) situated adjacent to the housing; the air

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mover (11) configured to draw airflow through the second airflow plenum in a first generally horizontal direction; the air mover (11) directing the airflow from the second airflow plenum in a second general vertical direction substantially perpendicular to the first direction (through the heat exchanger); a further heat exchanger (2) associated with the container; the heat exchanger (2) is situated in an interior of the container (vehicle) on a top of the container. Regarding claims 27 and 31-34, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employ does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitation. *Ex parte Masham*, 2 USPQ2d 1647 (1987). In this instant case, the container is intended to transport a fresh produce, a marine produce or to control ripening of fresh produce, does not differentiate the claimed container from the container of Grupa. Furthermore, it has been held that the recitation that an element is “adapted to” perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. In this instant case, the container (vehicle) and the heat exchanger system has an ability to contain fresh produce, to control ripening of fresh produce or to contain marine product. Grupa does not disclose that the heat exchanger is a coil assembly. However, in a refrigerating system, coil heat exchanger is well known. Attention is directed to either Mattioli or W. E. Lind, both of the references disclose that heat exchanger such as evaporator or condenser is a coil assembly for a purpose of obtaining a serpentine fluid flow pass heat exchanger that enhances the heat transfer performance of the heat exchanger. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use either Mattioli or Lind’s teaching in Grupa’s

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system for a purpose of obtaining a serpentine fluid low pass heat exchanger that enhances the heat transfer performance of the heat exchanger.

Allowable Subject Matter

Claims 28 and 48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. A filing of a terminal disclaimer is also required for claims 28 and 48 to be allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tho v. Duong whose telephone number is 571-272-4793. The examiner can normally be reached on M-F.

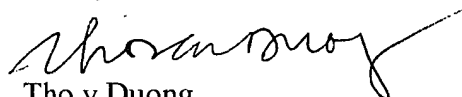
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tyler J. Cheryl can be reached on 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TP

TD
December 5, 2006



Tho v Duong
Primary Examiner
Art Unit 3744